THE HONOURABLE SRI JUSTICE V.ESWARAIAH

Date:24-01-2006

WRIT PETITION No. 1061 OF 2006

BETWEEN:

M.Srinivasa Rao.

…Petitioner

And

The Deputy Commissioner of Prohibition & Excise(A/C), Vijayawada, Krishna District and another.

…Respondents

ORDER:

The petitioner seeks to declare the proceedings in RC.No.17/2006/C, dated 17-01-2006 on the file of the 1st respondent to the extent of imposing conditions for grant of interim custody as illegal, void and arbitrary.

Heard the learned counsel appearing for the petitioner and the learned Government Pleader for Excise.

The petitioner submits that he is the owner of the lorry bearing No.AP-16 TT 3825 and the said lorry was seized alleging that it was involved in an Excise offence under Section 7(A), read with Section 8(e) of A.P., Prohibition Act 1995 and therefore, Crime No.272/2005-06 has been registered by the Prohibition and Excise Inspector, Nandigama. Against the offence committed under the Prohibition and Excise Act, a case has been filed before the Commissioner of Prohibition and Excise, Krishna District for criminal liability, but the concerned authority for confiscating the seized property is the first respondent i.e., Deputy Commissioner of Prohibition and Excise, Vijayawada. The first respondent issued a notice under Section 13 A of A.P. Prohibition Act, 1995 to the petitioner to show cause as to why the said vehicle should not be confiscated.

It is stated that the petitioner filed his explanation and he also filed a petition on 12-1-2006 for interim custody of the vehicle pending disposal of the confiscation proceedings. The first respondent passed orders in RC.No.17/2006/C, dated 17-1-2006 for interim custody of the said vehicle in favour of the petitioner pending finalisation of the confiscation proceedings subject to submission of the following documents:-

1. A bank guarantee/FDR in favour of the Deputy Commissioner of prohibition and Excise for a period of 5 years for full value of the vehicle as assessed by M.V.I., concerned.

2. An affidavit on Non-Judicial stamp paper worth Rs.10/- stating that the vehicle was not involved in any Excise crime earlier.

3. An undertaking on Non Judicial stamp paper worth Rs.100/- to the effect that the vehicle will not be sold out, alienated or part with in any manner and it will be produced before the authority in the present condition as and when called for etc., in usual proforma.

In addition to the aforesaid three conditions, it was further

directed the petitioner that he shall produce the said vehicle before the Prohibition and Excise Inspector, Nandigama once in a month or as directed by the Excise Officials whenever required. Aggrieved by the said conditions, the petitioner filed this writ petition questioning that the insisting of bank guarantee for the full value of the vehicle is as good as not releasing the vehicle. It is further stated that the owner is not at all the accused and he has no knowledge about the committal of the alleged offence.

I am not inclined to express any opinion whether the petitioner has got knowledge of the alleged offence or not as the confiscation proceedings are pending before the second respondent. In so far as the imposition of the condition is concerned, I am of the opinion that it is an onerous condition and in view of the contention that the petitioner has no knowledge of the alleged offence and he is not the accused in the criminal proceedings, the first condition is modified, directing the petitioner to furnish bank guarantee for a sum of Rs.50,000/- (Rupees fifty thousand only) and execute a personal bond to the effect that in the event of passing the confiscation proceedings confiscating the said vehicle, he will deposit the balance value of the vehicle.

The writ petition is disposed of accordingly. No costs.

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V.ESWARAIAH,J

Date: 24-01-2006,

Shr.